

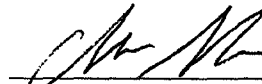
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have” programming for which AT&T can develop no substitute. Cox has not yet responded to this letter.

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Pursuant to 28 U.S.C. § 1746 and 47 C.F.R. § 1.16, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 19, 2008

  
\_\_\_\_\_  
Christopher Sambar

# EXHIBIT 1

# AT&T U-verse



## Customer Disclosure Form

Sales representatives and other contact personnel are required to provide the following oral disclosure (as written below with no variation) to customers prior to completing sales of certain products and/or services.

Please review the information below to ensure your sales representative has covered important disclosures regarding your AT&T U-verse service. If the sales representative covered the information in each paragraph, please place your initials in the space provided to the left of each paragraph. Thank you for choosing AT&T.

☐ (Customer Initial)

### **Streams: 4 Total Viewable Streams, 2 High Definition (if available)**

AT&T U-verse currently offers 100% digital IP television in a total of four viewable "streams" (channels). Two HD\* and two standard-definition (SD) channels, one HD\* and three SD channels, or four SD channels, can be recorded or viewed simultaneously. If you watch the same channel on different TVs, it counts as 1 stream. AT&T U-verse also supports up to 8 total set top boxes. One set top box per TV is required.

\*HD subscription fee will apply

\*Two HD streams may not be available in all areas

☐ (Customer Initial)

### **Digital Video Recorder (DVR)**

U-verse DVR currently operates on 1 TV. Up to 4 shows may be recorded at the same time, but may only be watched on the television connected to the DVR receiver.

☐ (Customer Initial)

### **Installation**

Due to the work involved installing U-verse in your home, please reserve four (4) to six (6) hours of your day to be home for the installation. Someone 18 years or older must be in your home at all times during the installation

☐ (Customer Initial)

### **Billing**

Your first U-verse bill will be pro-rated, and at this time, you will receive a separate bill for your U-verse services and phone services if you are (or are becoming) an access line customer with AT&T (excludes AT&T U-verse Voice customers).

☐ (Customer Initial)

### **Current Services**

You can avoid a period without service if you want to contact your previous provider until AFTER we install your U-verse service.

→ ☐ (Customer Initial)

### **No Padres Major League Baseball**

AT&T U-verse TV currently does not broadcast a channel airing live Padres regular season baseball games.

☐ (Customer Initial)

### **Electrical Outlets**

A grounded 3-pronged electrical outlet is required for use with the Residential Gateway that is used to deliver AT&T U-verse service. (Adapters that convert a 2-pronged outlet to a 3-pronged outlet are not compatible and will not work with the Gateway).

☐ (Customer Initial)

### **AT&T Voice (IP) (limited availability)**

If a power outage occurs, you won't be able to make or receive calls, including 911, without battery backup power. AT&T provides your initial battery, if needed. To conserve battery power, you should not use Internet service during an outage. Your home alarm will not function during a power outage without battery backup. As with any battery, a replacement is sometimes needed. Replacements can be ordered by calling the 800 numbers shown on your battery backup units or through another vendor.

## CERTIFICATION OF DISCLOSURE FOR IN PERSON CONTACTS

The undersigned certifies that the sales representative provided this information to the below identified customer in connection with the sale.

Customer Name (please print): \_\_\_\_\_

Agent ID: \_\_\_\_\_

Customer Signature: \_\_\_\_\_

Date (mm/dd/yy): \_\_\_\_\_

Agent Name: \_\_\_\_\_

Install Date: \_\_\_\_\_

Ban #: \_\_\_\_\_ BTN: \_\_\_\_\_

## IMPORTANT INFORMATION - Needed during installation and to make account changes

4 Digit Passcode: \_\_\_\_\_ Answer to Follow Up Question: \_\_\_\_\_

## AT&T California Residential Product Worksheet

This form is a record of services selected. It is not an order. The order itself is placed orally.

For Internal Use Only

### Required Service Information

Due Date:

Decision Maker First Name / Last Name

Billing Name (if different):

Main Telephone No:

Additional Line Telephone No:

Service Address House No. / Street Loc.

City

State / Zip Code

Billing Address (if different from above):

Please provide the following when asked: Providing your SSN# is voluntary and failure to provide it will not result in a denial of service for local telephone service and long distance.

Number to call if we have questions. CBR 1:

CBR 2:

Current E-mail Address (Required):

### AT&T U-verse

| Package<br>Retail<br>Pricing | TV<br>Only                    | TV and Internet Bundle Pricing |   |                                |                                |
|------------------------------|-------------------------------|--------------------------------|---|--------------------------------|--------------------------------|
|                              |                               | Express                        | Pro                                       | Elite                          | Max                            |
| U400 <sup>1</sup>            | <input type="checkbox"/> \$99 | <input type="checkbox"/> \$124 | <input checked="" type="checkbox"/> \$129 | <input type="checkbox"/> \$139 | <input type="checkbox"/> \$154 |
| U300 <sup>1</sup>            | <input type="checkbox"/> \$79 | <input type="checkbox"/> \$104 | <input type="checkbox"/> \$109            | <input type="checkbox"/> \$119 | <input type="checkbox"/> \$134 |
| U200 <sup>1</sup>            | <input type="checkbox"/> \$59 | <input type="checkbox"/> \$84  | <input type="checkbox"/> \$89             | <input type="checkbox"/> \$99  | <input type="checkbox"/> \$114 |
| U100 <sup>1</sup>            | <input type="checkbox"/> \$44 | <input type="checkbox"/> \$69  | <input type="checkbox"/> \$74             | <input type="checkbox"/> \$84  | <input type="checkbox"/> \$99  |
| U-Family <sup>2</sup>        | <input type="checkbox"/> \$44 | <input type="checkbox"/> \$69  | <input type="checkbox"/> \$74             | <input type="checkbox"/> \$84  | <input type="checkbox"/> \$99  |

<sup>1</sup>Up to 3 HD-ready boxes: 1 DVR + 2 STD

### AT&T Voice Options

|  |   |                             |
|--|---|-----------------------------|
| Is this your Primary Line?                                       | <input type="checkbox"/> Yes  | <input type="checkbox"/> No |
| <b>Access Line - Extended Service Areas and other Fees extra</b> |   |                             |
| <input type="checkbox"/> Flat Rate - \$10.69/mo                  | <input type="checkbox"/> Lifeline Flat Rate - \$5.34/mo                               |                             |
| <input type="checkbox"/> Measured Rate - \$5.70/mo               | <input type="checkbox"/> Lifeline Measured Rate - \$5.70/mo                           |                             |
| <b>For CA Lifeline only</b>                                      |   |                             |
| Toll Blocking:   | <input type="checkbox"/> Yes  | <input type="checkbox"/> No |
| <b>Listing</b>   | <input type="checkbox"/> Published <input type="checkbox"/> Non-Published - \$1.25/mo |                             |
| List name as:  |   |                             |
| <b>Phone Jacks</b>   | <input type="checkbox"/> Yes  | <input type="checkbox"/> No |

**U-verse INFORMATION YOU NEED**

Account #: \_\_\_\_\_  
Password: \_\_\_\_\_  
PIN: \_\_\_\_\_  
Due Date: \_\_\_\_\_  
Arrival Time: \_\_\_\_\_

Total monthly \$ 129/45 Total installation \$ 0  
Promotions HD Free 1 year \$120  
\$100 GC  
1 Month Free TV \$99

**AT&T U-verse Disclosures (please initial)**

       Streams: 4 Standard, 1 High Definition        Installation Time \_\_\_\_\_ HRS        No PADRES channel  
       1 DVR per household        Billed 1 month in advance        Other \_\_\_\_\_

This form does not provide a complete list of the services offered by AT&T California. Please call 1-800-288-2020 or visit our website [www.att.com](http://www.att.com), for additional information.

The sales representative has gone over the AT&T Residential Product Brochure with me. I understand that it is my responsibility to read it completely during the 3-day cancellation period and that acceptance of service after that period expires means that I have accepted the applicable terms and conditions in the brochure.

☐ Customer received disclosure booklet Customer Initials: \_\_\_\_\_

Authorized AT&T Sales Agent Name: \_\_\_\_\_ Customer Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**NOTE:** By Submitting this, you acknowledge that you have read and agree to the following terms: Installation charges may apply; Prices do not include taxes, government surcharges, the Federal Universal Service Fee, or the Federal Subscriber Line Charge, if applicable; Advance payment may be required; Additional discounts may apply. Confirmation of this order will be sent to the address you provided.

You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.

Dealers are not authorized to collect any payments for AT&T Services. Payments are made solely to AT&T California. Customer is advised that AT&T Dealers, including authorized AT&T sales representatives cannot vary the rates, terms or conditions of Company's Service offers or improperly decrease a Customer's financial obligation to the company.



## EXHIBIT 2

**Consumer U-verse ARPU (Enterprise Results) - for Padres Analysis**

**August 2008 Results - San Diego**

|                    | ARPU | Attach rate | Weighted ARPU |
|--------------------|------|-------------|---------------|
| IPTV               |      |             |               |
| HSIA               |      |             |               |
| VoIP               |      |             |               |
| U-verse Subscriber |      |             |               |

| <u>Results through 9/7/08</u> | Attach rate |
|-------------------------------|-------------|
| U-verse Inservice             |             |
| IPTV Inservice                |             |
| HSIA Inservice                |             |
| VoIP Inservice                |             |

|                           |                   |
|---------------------------|-------------------|
| U-verse IPTV Churn        | (Sep 07 - Jul 08) |
| Average Lifetime (months) |                   |

*Source*  
Inservice volumes- U-verse Scorecard 7/29  
Churn- Deacon Daily U-verse  
Churn calculated on market study data  
ARPU - Enterprise number for all Uverse customers

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**AT&T Proprietary (Internal Use Only)**  
Not for use or disclosure outside the AT&T companies  
except under written agreement



## EXHIBIT 3



Daniel R. York  
Executive Vice President  
Programming

AT&T Inc.  
1880 Century Park East  
Suite 1101  
Los Angeles, CA 90067

T: 310.552.0280  
F: 310.552.2244  
dan.york@att.com  
www.att.com

November 5, 2008

Craig Nichols  
Vice President and General Manager  
Cox Channel 4 San Diego  
350 10th Avenue, Suite 500  
San Diego, CA. 92101

Dear Mr. Nichols,

Since we have been unable to reach an agreement with respect to U-verse television's carriage of Channel 4 San Diego, I would like to propose an alternative that may address Cox's concerns. On behalf of AT&T, I would like to formally request the carriage rights to all San Diego Padre Major League Baseball games so that these games may be included as an option for customers of our U-verse Television service in San Diego. We can work with you on this or would also gladly work directly with the Padres to license the games if you will grant permission to do so. Of course, any agreement to carry Padre games on our U-verse network would include fair market compensation.

This proposed arrangement would relieve Cox from having to provide AT&T with the original local and public affairs programming Cox has developed for Channel 4, which – as Cox's Answer in AT&T's pending program access complaint proceeding makes clear – Cox objects to sharing. At the same time, it would provide AT&T access to the "must have" Padres programming, which has no substitute in the San Diego market. AT&T can, in contrast, offer alternative local and public affairs programming, which we intend to do.

We appreciate your consideration and look forward to your response. Thank you.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dan York", written over the printed name "Daniel York".  
Daniel York

# ATTACHMENT 4

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

AT&T SERVICES, INC. AND PACIFIC  
BELL TELEPHONE COMPANY D/B/A  
SBC CALIFORNIA D/B/A AT&T  
CALIFORNIA,

Complainants,

File No. CSR-8066-P

v.

COXCOM, INC.

Defendant.

AMENDED PROGRAM ACCESS COMPLAINT

Christopher M. Heimann  
Gary L. Phillips  
Paul K. Mancini  
AT&T SERVICES, INC.  
1120 20th St., NW, Suite 1000  
Washington, DC 20036  
(202) 457-3058

Lynn R. Charytan  
Heather M. Zachary  
Dileep S. Srihari  
WILMER CUTLER PICKERING  
HALE AND DORR LLP  
1875 Pennsylvania Ave., NW  
Washington, DC 20006  
(202) 663-6000

*Counsel for Complainants AT&T Services, Inc. and AT&T California*

October 6, 2008

**TABLE OF CONTENTS**

|             |   |           |
|-------------|---|-----------|
| <b>I.</b>   | <b>SUMMARY .....</b>  | <b>1</b>  |
| <b>II.</b>  | <b>JURISDICTION .....</b>   | <b>3</b>  |
| <b>III.</b> | <b>THE COMPLAINANTS .....</b>   | <b>3</b>  |
| <b>IV.</b>  | <b>THE DEFENDANT .....</b>  | <b>5</b>  |
| <b>V.</b>   | <b>STATEMENT OF FACTS.....</b>  | <b>6</b>  |
| <b>A.</b>   | <b>AT&amp;T's U-verse TV Service.....</b>   | <b>6</b>  |
| <b>B.</b>   | <b>Cox Has Consistently Refused To License Cox-4 To AT&amp;T. ....</b>  | <b>8</b>  |
| <b>C.</b>   | <b>Cox's Refusal To License Its Regional Sports Network Has Hampered<br/>AT&amp;T's Efforts To Provide U-verse TV Service To Consumers.....</b>   | <b>10</b> |
| <b>D.</b>   | <b>Cox's Actions Are Anticompetitive In Intent.....</b>   | <b>13</b> |
| <b>VI.</b>  | <b>LEGAL ARGUMENTS .....</b>  | <b>17</b> |
| <b>A.</b>   | <b>Cox's Refusal To Deal Violates Section 628(b) Of The<br/>Communications Act. ....</b>  | <b>17</b> |
| <b>1.</b>   | <b>The Commission Has Made Clear That Section 628(b) Broadly<br/>Prohibits <i>Any</i> Conduct That Unfairly Depresses Competition For<br/>The Provision Of Satellite Video Programming. ....</b>  | <b>19</b> |
| <b>2.</b>   | <b>The Commission Has Recognized That Conduct Involving<br/>Terrestrially-Delivered Programming Can Implicate Section 628(b)<br/>By Hindering The Provision Of Satellite-Delivered<br/>Programming.....</b>                                       | <b>21</b> |
| <b>3.</b>   | <b>The Facts Here Show That Cox's Actions Directly Hinder AT&amp;T's<br/>Ability To Offer A Viable, Alternative Video Service In<br/>San Diego. ....</b>  | <b>25</b> |
| <b>4.</b>   | <b>The Commission Should Be Particularly Sensitive Here To A<br/>Potential Violation Of Section 628(b) Given AT&amp;T's Role As A<br/>Wireline New Entrant, Section 706's Mandate, And The Pro-<br/>Competitive Policies Of The 1996 Act.....</b> | <b>27</b> |

|   |   |           |
|---|---|-----------|
| <b>B.</b>   | <b>The Commission Has Ancillary Authority To Require Cox To License Its Regional Sports Network To AT&amp;T. ....</b> | <b>32</b> |
| <b>VII.</b>   | <b>COUNT 1 — REFUSAL TO SELL PROGRAMMING IN VIOLATION OF THE COMMUNICATIONS ACT AND COMMISSION RULES .....</b>        | <b>33</b> |
| <b>VIII.</b>  | <b>REQUEST FOR DISCOVERY .....</b>  | <b>34</b> |
| <b>IX.</b>  | <b>REQUEST FOR PROMPT DECISION.....</b>   | <b>34</b> |
| <b>X.</b>   | <b>REQUEST FOR DAMAGES.....</b>   | <b>35</b> |
| <b>XI.</b>  | <b>REQUEST FOR PENALTIES .....</b>  | <b>38</b> |
| <b>XII.</b>   | <b>REQUEST FOR RELIEF .....</b>   | <b>39</b> |
| <b>VERIFICATION OF CHRISTOPHER M. HEIMANN</b>           |   |           |
| <b>CERTIFICATE OF SERVICE</b>                           |   |           |
| <b>ATTACHMENT A – DECLARATION OF DANIEL YORK</b>        |   |           |
| <b>ATTACHMENT B – DECLARATION OF CHRISTOPHER SAMBAR</b> |   |           |

## I. SUMMARY

1. AT&T provides U-verse TV—a multichannel, Internet-Protocol-based video programming service—to consumers in numerous cities, including San Diego. Pursuant to Section 628 of the Communications Act of 1934, as amended,<sup>1</sup> and the Commission’s program access rules, 47 C.F.R. §§ 76.1000 *et seq.*, AT&T brings this amended program access Complaint (“Complaint”) to redress the ongoing and repeated refusal of Defendant CoxCom, Inc. to license its regional sports programming to AT&T in San Diego.

2. The Cox programming at issue—Cox-4, which includes exclusive live coverage of San Diego Padres baseball games—is precisely the type of “must have” programming identified by the Commission in its recent order extending the program access rules.<sup>2</sup> The Commission has recognized repeatedly that competitive video service providers must carry such programming to attract and retain subscribers. And the facts here show that inability to provide this “must-have” programming in San Diego has had a demonstrated, significant impact on the success of AT&T, as well as other competitive video service providers, in obtaining subscribers. Furthermore, AT&T has experienced increased churn and order cancellations as a direct result of the lack of this vital programming—so much so that AT&T has been forced to require new customers to sign acknowledgements that AT&T does not carry Padres programming; customers

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<sup>1</sup> 47 U.S.C. § 548.

<sup>2</sup> Report and Order and Notice of Proposed Rulemaking, *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, 22 FCC Rcd 17791, 17817 ¶ 39 (2007) (“2007 Program Access Order”) (“We find that access to this non-substitutable programming is necessary for competition in the video distribution market to remain viable. An MVPD’s ability to compete will be significantly harmed if denied access to popular vertically integrated programming for which no good substitute exists.”); *see also* Report and Order, *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, 17 FCC Rcd 12124, 12139 ¶ 33 (2002) (“2002 Extension Order”).

ordering by phone are required to listen to a specific disclosure. Indeed, AT&T estimates that as of July 2008, it had lost over [highly confidential\*\*\* \*\*\*end] in present and expected subscriber revenues due to the lack of Padres programming. Meanwhile, Cox's hold on San Diego continues to be reinforced as a result of Cox's exclusive access to Cox-4, while the ability of competitors to provide an alternative source of video programming—and thus contribute to the diversity of programming channels—is substantially hampered.

3. While Cox contends that it may withhold Cox-4 programming with impunity because the channel is delivered terrestrially and thus outside the direct ambit of the Commission's rules adopted pursuant to Section 628(c) of the Act, this misses the point. Cox's actions have a demonstrated adverse impact on the ability of competitive video service providers to offer a viable alternative that includes satellite-delivered programming, and thus its withholding of Cox-4 directly affects the competitive distribution of the satellite-delivered programming that is expressly covered by the Act. The Commission always has recognized the possibility that abuse of the so-called "terrestrial loophole" could violate the Act by flouting Section 628(b)'s prohibition on "unfair methods of competition or unfair ... acts or practices" that have the purpose or effect of "hinder[ing] significantly or ... prevent[ing] any multichannel video programming distributor from providing satellite cable programming or satellite broadcast programming to subscribers or consumers."<sup>3</sup> Section 628(b), as well as Sections 628(a) and 628(c) of the Act, authorize the Commission to take whatever reasonable steps may be necessary to protect and increase "competition and diversity in the multichannel video programming

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<sup>3</sup> 47 U.S.C. § 548(b).



market.”<sup>4</sup> While the Act focuses in particular on competition with respect to satellite-delivered programming, the Commission has found that it must sometimes reach *beyond* such programming in order to promote that competitive goal. In fact, in its recent *MDU Order*, the Commission recognized that cable incumbents can violate Section 628’s prohibition through actions that do not directly involve programming at all—like exclusive contracts for building access.<sup>5</sup> Here, Cox’s anticompetitive actions have both the purpose *and* the effect of hindering AT&T’s ability to serve San Diego consumers, and “competition and diversity in the multichannel video programming market”—for satellite-delivered video programming—accordingly suffers. The Commission has authority to act here to achieve Congress’s objectives in the Communications Act, and it must do so.

## II. JURISDICTION

4. The Commission has jurisdiction to consider this Complaint under Section 628(d) of the Act, 47 U.S.C. § 548(d).

## III. THE COMPLAINANTS

5. Complainant Pacific Bell Telephone Company d/b/a SBC California d/b/a AT&T California (“AT&T California”) operates a communications network in California that provides access lines and associated services to residential and business customers. In portions of the state, including San Diego, AT&T California is a new, competitive multichannel video programming distributor that serves residential and commercial customers with an Internet

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<sup>4</sup> 47 U.S.C. § 548(a), (c)(1).

<sup>5</sup> Report and Order and Further Notice of Proposed Rulemaking, *Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, 22 FCC Rcd 20235, 20245 ¶ 19 (2007) (“*MDU Order*”).

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Protocol (IP) video service known as U-verse TV. AT&T California has been granted a state-wide franchise by the state of California to provide video services. AT&T California uses state-of-the-art broadband facilities to offer U-verse TV, which can be ordered alone or as part of various bundled offerings, including a robust “triple-play” offering that includes IP video, high-speed Internet access, and telephony.

6. Complainant AT&T Services, Inc. is a Delaware corporation with its principal place of business in San Antonio, Texas. AT&T Services, Inc. is a wholly owned subsidiary of AT&T Inc. that provides management and specialized services to its parent company and the parent company’s direct and indirect subsidiaries and affiliates. Among its other activities, AT&T Services, Inc. purchases products and services, including rights to television programming, on behalf of AT&T California and other affiliated communications service providers. *See* Declaration of Daniel York ¶ 2 (“York Decl.,” attached as Attachment A).

7. Complainants AT&T California and AT&T Services, Inc. are collectively referred to hereinafter as “AT&T.” AT&T is a multichannel video programming distributor (“MVPD”) for purposes of the Communications Act of 1934, as amended (“the Act”), and the Commission’s rules because AT&T “makes available for purchase, by subscribers or customers, multiple channels of video programming.” 47 U.S.C. § 522(13); 47 C.F.R. § 76.1000(e). Pursuant to 47 C.F.R. § 76.1003(c)(1), AT&T hereby provides the following contact information:

Christopher M. Heimann  
AT&T Services, Inc.  
1120 20th St., NW, Suite 1000  
Washington, DC 20036  
(202) 457-3058

Lynn R. Charytan  
Wilmer Cutler Pickering Hale and Dorr LLP  
1875 Pennsylvania Ave., NW  
Washington, DC 20006  
(202) 663-6455

**IV. THE DEFENDANT**

8. CoxCom, Inc. is a Delaware corporation headquartered in Atlanta, Georgia.

9. CoxCom, Inc. provides cable programming, broadband Internet, and telephony services to residential and business customers. Directly or through subsidiaries or affiliated entities, CoxCom, Inc. is the incumbent cable operator in twenty-nine markets across the country, has over six million total residential and commercial customers, and is the third-largest cable television company in the United States.

10. Directly or through a subsidiary or affiliate, CoxCom, Inc. owns Cox-4 (also known as 4-SD), a video programming provider that carries programming relevant to the San Diego area, which in particular includes regional sports programming. CoxCom, Inc. (or its subsidiary or affiliate) has exclusive rights to games played by Major League Baseball's San Diego Padres, which it (or its subsidiary or affiliate) provides to customers via Cox-4. The channel also provides sports programming coverage for San Diego State University, the University of San Diego, and local high school football teams. Cox-4 also includes local news and entertainment programming.

11. CoxCom, Inc. is a "cable operator" for purposes of the Act and the Commission's rules because it "provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system," 47 U.S.C. § 522(5), (6); 47 C.F.R. § 76.5 (a), (cc), (ff), and/or because it "controls or is responsible for ... the management and operation of" such a cable operator, 47 U.S.C. § 522(5); 47 C.F.R. § 76.5(cc); *id.* § 76.1000(b).

12. Hereinafter, CoxCom, Inc., its subsidiaries, and any relevant affiliated entities are collectively referred to as "Cox."

13. AT&T believes the relevant addresses and telephone numbers for Cox for purposes of this Complaint are:

CoxCom, Inc.  
1400 Lake Hearn Drive NE  
Atlanta, Georgia 30319  
(404) 843-5000

David Mills  
Dow Lohnes PLLC  
1200 New Hampshire Ave., NW, Suite 800  
Washington, DC 20036  
(202) 776-2000

## V. STATEMENT OF FACTS

### A. AT&T's U-verse TV Service.

14. In an effort to bring competition to the market for video services, AT&T has launched Project Lightspeed, a multi-billion-dollar initiative to deploy more than 40,000 miles of new fiber-optic facilities across AT&T's footprint in the United States. AT&T is using these state-of-the-art broadband facilities to deliver its U-verse service to customers. U-verse is a platform capable of supporting several services and service packages, including a robust "triple-play" offering of IP video, high-speed Internet access, and telephony.<sup>6</sup> See York Decl. ¶¶ 4-5. This service promises to expand consumer choice and provide price and service-quality competition to the cable incumbents, including Cox. U-verse already is available in over 25 areas across the United States. See *id.* ¶ 6.

15. AT&T launched U-verse in San Diego just over a year ago, on June 4, 2007. The San Diego service is still in its vital initial stage as AT&T strives to attract subscribers and retain those it wins. Attaining a sufficient foothold in a reasonable time period is critical to attracting

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<sup>6</sup> Nearly all U-verse platform subscribers in San Diego—[highly confidential\*\*\*  
\*\*\*end] percent—purchase packages that include video service. See Declaration of Christopher Sambar ¶ 3 ("Sambar Decl.," attached as Attachment B). AT&T's damages calculation accounts for the small number of subscribers who do not purchase packages including U-verse TV service. See *id.* ¶ 30.

advertising at profitable rates and negotiating reasonable programming licenses. *See id.* ¶ 10.

But this is a significant challenge: As a new entrant, AT&T must compete with incumbent cable providers Cox and Time Warner, which, in their essentially non-overlapping footprints, serve a combined 87.1% of all MVPD subscribers in San Diego.<sup>7</sup> AT&T, which also sells AT&T/DISH TV service, also competes with other satellite services in the San Diego area—where satellite providers have a much smaller share of the market than their national average of 33%.<sup>8</sup>

16. In order to compete with the incumbent providers, and in particular with Cox and Time Warner in the San Diego area, U-verse TV must include the popular programming that consumers demand. As the Commission has recognized, certain programming is “must-have,” without which an MVPD cannot compete effectively in the marketplace.<sup>9</sup> AT&T has been able to secure access to much of this content by licensing satellite-delivered programming from a variety of providers (including Cox) and has been able to assemble a program offering that includes over 250 channels of English and Spanish-language video programming, as well as additional premium packages, a video-on-demand library, and enhanced functions such as fast channel changing and network-supported picture-in-picture viewing. *See* York Decl. ¶ 7.

17. However, despite its best efforts, AT&T has been unable to secure access to the core “must-have” programming that it needs in San Diego—namely, Cox-4. As detailed below,

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<sup>7</sup> 2007 Program Access Order, 22 FCC Rcd at 17828 ¶ 52 n.277.

<sup>8</sup> *Id.* at 17818 ¶ 39 n.196 (citing 13.7% share for all non-cable MVPDs combined).

<sup>9</sup> 2002 Extension Order, 17 FCC Rcd at 12139 ¶ 33; *see also* 2007 Program Access Order, 22 FCC Rcd at 17817 ¶ 39 (“We find that access to this non-substitutable programming is necessary for competition in the video distribution market to remain viable. An MVPD’s ability to compete will be significantly harmed if denied access to popular vertically integrated programming for which no good substitute exists.”).

Cox has repeatedly, deliberately, and definitively refused to license Cox-4 to AT&T, or even to enter into discussions concerning licensing terms.

18. Cox's refusal to provide Padres programming is exacting a severe toll on AT&T's MVPD subscription figures in San Diego—especially as compared to AT&T's success in other areas across the country. And because AT&T's ability to provide meaningful competition is being hampered, San Diego consumers are being deprived of a vibrant MVPD alternative and the associated service improvements, price reductions, and programming diversity—for satellite- and terrestrially-delivered programming. Cox's actions also are affecting competition for broadband services and voice telephony, and for the "triple play" of all these services together.

**B. Cox Has Consistently Refused To License Cox-4 To AT&T.**

19. AT&T first began its efforts to license Cox-4 for U-verse TV in 2005. On October 5, 2005, J. Christopher Lauricella of AT&T sent an email to Debbie Cullen of Cox expressing interest in a carriage agreement for Cox-4 San Diego. *See* York Decl. ¶ 13 & Ex. 1. Ms. Cullen did not reply.

20. On October 12, 2005, Mr. Lauricella sent essentially the same email to Debbie Ruth of Cox. *See id.* ¶ 14 & Ex. 2. Ms. Ruth did not reply.

21. On October 17, 2005, Daniel York of AT&T spoke on the telephone with Michael Miller of Cox regarding AT&T's interest in licensing Cox-4 San Diego. Mr. Miller explained that Cox was not accepting new affiliates. *See id.* ¶ 15.

22. Later that same day, Mr. York emailed Mr. Miller, requesting that Cox reconsider. *See id.* ¶ 15 & Ex. 3. In that email, Mr. York explained that "the carriage of local sports programming is of critical importance and value to consumers, and is essential for a

successful launch of a video service in ... San Diego.” *Id.* He also requested that Cox explain why it was unwilling to license Cox-4 to AT&T “so that we can discuss a possible solution.” *Id.*

23. On October 27, 2005, Mr. Miller emailed in response, “to reconfirm our position that we are not accepting new affiliates for our Cox Ch. 4 in San Diego at this time.” *Id.* ¶ 16 & Ex. 4. He stated, “We are currently satisfied with our level of distribution of the service.” *Id.*

24. After the launch of U-verse in San Diego, it became increasingly clear that the lack of Cox-4 was a serious impediment, as explained below. On June 27, 2008, Daniel York accordingly renewed his attempts to negotiate, contacting Cox by telephone to discuss licensing Cox-4. Craig Nichols of Cox Media (who is also the General Manager of Cox-4) returned his call that day and stated that Cox was unwilling to license the programming to non-wireline or telephone video carriers. *See id.* ¶ 18.

25. That same day, Mr. York emailed Mr. Nichols memorializing their conversation and stating that “I sincerely hope you’ll allow us to become a distributor of this valuable content.” *Id.* ¶ 18 & Ex. 5.

26. On July 7, 2008, having received no reply from Cox to this email, Mr. York followed up with an additional email to Mr. Nichols, expressing interest in licensing Cox-4. *See id.* ¶ 19 & Ex. 5.

27. On July 9, 2008, Mr. Nichols wrote to Mr. York and reiterated that Cox would not license the channel. In that email, Mr. Nichols wrote, “[W]e are not currently distributing that channel to non-wireline or telco cable providers.” *Id.* ¶ 20 & Ex. 5.

28. On July 18, 2008, Mr. York sent a letter to Mr. Nichols, copying Cox General Counsel Andrew A. Merdek. Pursuant to 47 C.F.R. § 76.1003(b), that letter informed Cox of

AT&T's intention to file this Complaint if the companies were unable to reach a carriage agreement for Cox-4. *See* York Decl. ¶ 21 & Ex. 6. In that letter, Mr. York again asked Cox to reconsider and explained that "the Cox-4 programming, and in particular the San Diego Padres baseball games, is critical to AT&T's ability to provide a viable competitive video program service to San Diego consumers." *Id.*

29. In a letter dated July 30, 2008, Mr. Nichols again refused to negotiate with AT&T concerning carriage of Cox-4. *See id.* ¶ 22 & Ex. 7. Although he acknowledged that Cox-4 is available to other *cable* providers, he nonetheless refused even to enter into discussions with AT&T: "While Cox makes Channel 4 San Diego available to some other traditional wireline cable competitors in the San Diego market, we reserve the right to make our own business decisions on additional distribution channels." *Id.* Cox asserted that it had this right because the particular programming at issue is not satellite-delivered, and argued that depriving AT&T of the programming would not affect its ability to provide a successful competitive service. *See id.*

**C. Cox's Refusal To License Its Regional Sports Network Has Hampered AT&T's Efforts To Provide U-verse TV Service To Consumers.**

30. Objective data show that the lack of Padres programming is significantly hampering AT&T's efforts to gain and keep subscribers for U-verse TV in San Diego, and thus to provide both satellite-delivered and terrestrially-delivered video programming to consumers.

31. In 2008, AT&T's Customer Analytics and Research division conducted a study of 132 people examining the impact that the lack of Padres programming would have on AT&T's ability to attract and retain customers. *See* Sambar Decl. Ex. 4. The study shows that over [highly confidential\*\*\* \*\*\*end] percent of San Diego video programming customers surveyed believe it is "important" or "extremely important" to "have the Padres channel included



as part of [their] cable or satellite channel lineup.” *Id.* ¶ 7 & Ex. 4 at 18. Further, over [highly confidential\*\*\* \*\*\*end] percent of those surveyed stated they would be “somewhat unlikely” or “extremely unlikely” to consider service from a television service provider that did not offer Cox-4, even if that provider offered incentives such as tickets to Padres baseball games or a \$50 Visa gift card. *See id.* ¶ 7 & Ex. 4 at 17.

32. A 2007 study produced similar results, though the trend has apparently steepened slightly in 2008—in 2007, [highly confidential\*\*\* \*\*\*end] percent of respondents considered it “important” or “extremely important” that Cox-4 be included as part of their video service. *See id.* ¶ 6 & Ex. 2 at 19.

33. Further, in that 2007 survey, many individual respondents made clear just how important Cox-4 was to their selection of an MVPD. [highly confidential\*\*\* \*\*\*end] percent of respondents identified Cox-4 as one of their favorite channels, and among that subgroup, [highly confidential\*\*\* \*\*\*end] percent said they would “definitely” switch providers if Padres programming were not offered. *See id.* ¶ 6 & Ex. 2 at 14-15. When asked “If the Padres Channel were not available on your TV program service, what would you accept as a substitute?” responses included: “Nothing!!!”; “I can’t loose my Padres Channel”; “The big problem with satellitè service is that we can not get the channel 4 padre station”; “There [would] not be a substitute for not getting the Padres”; “The only thing we can tell you is that that is the only reason we have chosen NOT to change from COX. [W]e love watching the Padres games ...”; and “Padres games are the most important television programs in our home. Only providers of Padres games are under consideration whatsoever. No substitute is possible.” *See id.* at Ex. 3; *see also id.* at Ex. 2, at 22.